



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

This Opinion  
Overrules Opinion

#0-1577

Honorable J. W. Calhoun  
Comptroller of the University of Texas  
Austin, Texas

Dear Sir:

Opinion No. 0-1861

Re: Whether or not the property held by the Board of Regents of the University of Texas for the use and benefit of the University for specific purposes donated to the University by George Beggs and Mike Hogg is exempt from taxation.

Under date of January 15, 1940, Honorable Dan W. Jackson requested that we reconsider our opinion No. 0-1577, wherein we held that the property mentioned therein was exempt from taxation. We are addressing our reply to you and sending a copy to Mr. Jackson.

After further consideration of the opinion as written we are still of the opinion that the same is correct in its conclusion, but that the reasons given in that opinion would likely lead to confusion. We are therefore reconsidering the question, and the opinion here written shall be in lieu of opinion No. 0-1577.

On December 30, 1938, George Beggs, as Executor and Trustee under the will of Edward Disney Farmer, deceased, conveyed to the Board of Regents of the University of Texas for the use and benefit of the University, certain land in the City of Fort Worth. The title and possession of the University of Texas to this property was confirmed by a decree of the 126th District Court, Travis County, Texas, on May 31, 1939, in Cause No. 61,647, styled State of Texas, et al vs. George Beggs.

At the First Called Session of the 41st Legislature, Chapter 25, page 59 of the Acts thereof, the Legislature established the "E. D. Farmer International Scholarship Fund,"

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and provided that it should be administered by the Board of Regents of the University of Texas.

The Act of the Legislature establishing the "E. D. Farmer International Scholarship Fund" provided that the funds should be used for the purpose of providing scholarships in the University of Texas to students from the Republic in Mexico, and providing scholarships in the National University of Mexico to students of the University of Texas.

The property conveyed by said George Beegs is now rented by the Board of Regents for garage purposes, and the revenue therefrom is placed to the credit of the "E. D. Farmer International Scholarship Fund."

The property conveyed by Mike Hogg, as Independent Executor of the estate of W. C. Hogg, deceased, et al, consists of real estate, mineral rights, oil royalties, bonds, notes, shares of stock and other property which constituted the residue of the estate of W. C. Hogg, deceased.

The will of W. C. Hogg, deceased, provided that such residue would be conveyed to:

"The Board of Regents of the University of Texas, so that said Board of Regents may devote all or as much of it as may be necessary to the endowment, establishment and maintenance of a lecture fund aimed to secure the services of men of proved learning to deliver courses or random lectures on the history, literature, art and social and political experience of mankind. The controlling purpose of this foundation should be to insure an opportunity to the University and the people of Texas for knowing what the real achievements and past experience of mankind have been. To this end, the lecturers retained by said foundation may, in the discretion of the authorities of the University, and as the income of the foundation may permit, deliver their respective addresses on invitation at any educational institution, public library, town hall, public art institute, public auditorium, etc., within the State of Texas, provided no admission be charged. I especially

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request that, at least during the first three to five years of this foundation work attention and emphasis be given by retained lecturers of national ability and reputation to the value and service of education and the duty and obligation of our commonwealth and all its divisions, to establish, equip and support adequately, if not par excellence, all needed educational facilities in keeping with the dignity and aspiration of our great State."

When the Constitution of Texas was adopted, the people of the State provided for the establishment of the University of Texas by the adoption of Article VII, Section 10 thereof.

The Constitution also provides for the establishment and maintenance of a system of free public schools by the adoption of Article VII, Section 1, and used the phrase "a general diffusion of knowledge being essential to the preservation of the liberties and rights of the people," thereby recognizing that the education of the masses was a function of the state government. Within nine years after the adoption of the Constitution, the Supreme Court recognized that education was a governmental function in the case of *Cassiano vs. Ursuline Academy*, 64 Tex. 373.

The University of Texas is a department of the state government created for the purpose of education. *Maune vs. Marrs*, 40 S. W. (2d) 31, and *Oklahoma A. & M. College vs. Miller*, 52 Pac. 921. And in the case of *Cochran vs. Cavanaugh*, 232 S. W. 234, Chief Justice Jones said:

"The State University is a public institution authorized by the Constitution of the State of Texas. . ."

The University of Texas was established by the Act of 1881 (Ch. 75, Acts, Regular Session, 17th Legislature), and is under the control of the Board of Regents by an Act of the Legislature, and said Board derives all of its powers and duties from the Legislature of Texas. Article 2584 et seq. In the celebrated case of *Dartmouth College vs. Woodward*, it was held that such officers were state officers. In that case, Chief Justice Marshall used the following language:

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"That education is an object of National concern, and a proper subject of legislation, all admit. That there may be an institution founded by the government and placed entirely under its immediate control, the officers of which would be public officers, amenable exclusively to the government, none will deny."

In the case of *Splawn vs. Woodward*, 287 S. W. 657, Chief Justice McClendon said:

"The regents are clearly officers of the state charged with the duty of management and control of the University and its properties."

It is, therefore, our opinion that the University of Texas is a department of the State of Texas and is operated for the use and benefit of the public, and that its Board of Regents are state officers. Therefore, any land that belongs to the University of Texas is land that belongs to the State of Texas.

The power to tax is an attribute of sovereignty and the extent to which this power may be exercised for governmental purposes finds its only limitation in the Constitution. *Stratton vs. Commissioners Court*, 139 S. W. 1170 (writ refused). Taxation is inherent in sovereignty and without which a constitutional government cannot exist. It is vested in the Legislature by the general grant of legislative power whether specifically enumerated in the Constitution, among the powers to be exercised by it, or not. The constitutional provisions in reference to it, therefore, are more usually intended or understood as limitations and restrictions upon its exercise, than as a direct grant of the power to the Legislature. 40 Tex. Jur. p. 21.

Taxes are defined to be the burdens, or charges, imposed by the legislative power of the State upon persons or property to raise money for public purposes. *Clegg vs. State*, 42 Tex. 808.

The subjects of taxation under our constitutional limitations are, primarily, property and person; and taxes are levied by the State under its sovereign power on the property of its citizens for governmental purposes only.

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Texas Employers Insurance Association vs. City of Dallas, 5 S. W. (2d) 614 (writ of error refused). The object of taxation is to produce the revenues with which to conduct the business of the state; it is entirely inconsistent with our theory of government for the property of the state to be taxed, in order to produce the money to be expended by the state. 25 Pac. (2d) 1074, State vs. Board of County Commissioners (Sup. Ct. Oklahoma).

The purpose of taxation being only for the raising of money with which to carry on the governmental functions, to tax the property of the state would only amount to taking money out of one pocket and putting it in another. As stated by Justice Bratton in the case of State vs. Locke, 30 A. L. R. 407 (Sup. Ct. New Mexico):

"All exemptions granted from taxation proceed upon the theory of public policy, but the public policy involved is not always the same. For instance, the exemptions granted by the above quoted constitutional provision to church property, public libraries, educational and charitable institutions, and cemeteries, not used and held for private or corporate profit, proceeds on the theory of the public good accomplished by them, and of the peculiar benefit derived by the public in general from their conduct. It is an act of grace upon the part of the state, which emanates from such considerations. The exemption granted to the property of the United States is perhaps compulsory; that to the state, all counties, towns, cities and school districts arises from public policy, which repudiates, as being utterly futile, the theory of the state taxing its own property in order to produce the funds with which to operate its own affairs. To tax it would merely require and render it necessary to levy new taxes to meet the demand of those already laid; that the public would thus be taxing itself to produce the money with which to pay to itself the taxes previously assessed, thereby benefiting no one except the officers employed to collect and disburse such revenues, whose compensation would merely serve to increase the burden of this useless and idle ceremony. Another consideration

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which should not be overlooked, is that if public property, that is to say property owned by the state, is to be burdened with a tax lien the public might lose it entirely through oversight and carelessness of its agents in failing to pay the taxes when due, and allowing the same to be sold and the title passed to third parties."

Therefore, in so far as property belonging to the state is concerned, exemption from taxation is the general rule and not the exception. Before such property may be subjected to taxation in any form, the intention to do so must be declared either by express enactment or by clear implication of law. 1 Pac. (2d) 605, Eagle Point Irrigation District vs. Cowden, et al (Sup. Ct. Oregon).

There is nothing in our statutes which makes land belonging to the state subject to taxation, and there is nothing in the Constitution which by express declaration or by implication would permit such taxation, except as will be hereinafter noted. Of course, Article VIII, Section 1 of the Constitution provides that all property in this state shall be taxed in proportion to its value, whether owned by natural persons or corporations; and Article VIII, Section 11 provides that all property, whether owned by persons or corporations, shall be assessed for taxation. While it is true that the State has some of the attributes of a corporation, we believe that the framers of the Constitution did not intend that the word corporation would include the state.

It is our opinion that land belonging to the state of Texas is exempt from taxation unless there is an express enactment to that effect. We do not have any decisions from this jurisdiction directly on this point, but in the case of Taylor vs. Robinson, 10 S. W. 245, the Supreme Court held that lands set apart by the state for the contractor, as payment for the construction of the Capitol of Texas, to be conveyed to him when earned in the progress of the work, is not subject to taxation, as land held under a contract for purchase from the state.

Furthermore, the state has never held itself subject to taxation except by special enactment. This is proved by the fact that when the state decided that the land belong-

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ing to the Permanent University Fund should be subject to taxation for county purposes, it was necessary to adopt Article VII, Section 16 (a) of the Constitution. The land in question is not subject to taxation under the above amendment because it is not a part of the Permanent University Fund, and it did not belong to the University at the time said amendment went into effect.

Nothing in this opinion is to be construed as holding that the state does not have authority to tax its own property.

We are of the opinion that the property conveyed to the Board of Regents for the use and benefit of the University of Texas by George Beggs and Mike Hogg is property belonging to the state and is therefore exempt from taxation.

We sincerely trust that the foregoing fully answers your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Richard H. Cooke*  
Richard H. Cooke  
Assistant

RHC:CO

CC: Honorable Dan W. Jackson  
District Attorney  
Houston, Texas

APPROVED FEB 29, 1940

*Gen. Ed. Mann*  
ATTORNEY GENERAL OF TEXAS

